Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight	)	WC Docket No. 05-195
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

REPORT AND ORDER

Adopted: August 22, 2007 **Released: August 29, 2007**

By the Commission:

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I. INTRODUCTION

1. In this Report and Order, we adopt measures to safeguard the Universal Service Fund ("USF") from waste, fraud, and abuse as well as measures to improve the management, administration, and oversight of the USF. Specifically,

- We strengthen oversight of the USF contributions process by requiring timely filing of Telecommunications Reporting Worksheets and timely payment of USF contributions.
- We clarify current procedures and restructure the rate of interest under the Debt Collection Act of 1982 ("Public Law 97-365") and the Debt Collection Improvement Act of 1996, ("Public Law 104-134") as amended (the "DCIA"), that is imposed when contributors fail to make USF contributions on time and apply the same rate to contributors that fail to file properly the FCC Forms 499-A and 499-Q.
- We adopt document retention requirements and administrative limitation periods for the high-cost, low-income, and rural health care universal service programs. We also adopt document retention requirements for USF contributors.
- We adopt rules for recovery of improperly disbursed funds for the high-cost, low-income, and rural health care universal service programs.
- We revise our debarment rules to include parties who are convicted of criminal violations or held civilly liable for acts arising out of participation in the high-cost, low-income, and rural health care universal service programs.
- We adopt performance measures for the universal service programs and for the Administrator.

II. BACKGROUND

2. A key goal of universal service is to ensure affordable telecommunications services to consumers living in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.[1] Section 254 of the Communications Act of 1934, as amended (the "Act"), required explicit federal universal service mechanisms and enlarged the scope of the universal service program. The universal service programs are funded by contributions from telecommunications carriers providing interstate telecommunications services and from certain other providers of interstate telecommunications. The Universal Service Administrative Company ("USAC"), a subsidiary of the

[1] *See* 47 U.S.C. § 254(b).

National Exchange Carrier Association ("NECA"), a private not-for-profit corporation, was created to serve as the Administrator of the USF.

3. The USF consists of four programs: (1) the universal service mechanism for high-cost areas, providing financial support to eligible telecommunications carriers ("ETCs") serving high-cost areas; (2) the universal service mechanism for schools and libraries (also known as the E-rate program), providing for discounted services (telecommunications services, Internet access, and internal connections) to eligible schools and libraries; (3) the universal service mechanism for low-income consumers, assisting low-income consumers with discounted installation and monthly telephone services; and (4) the universal service mechanism for rural health care, providing discounted telecommunications and information services to rural health care providers.

4. On June 14, 2005, we initiated a broad inquiry into the management, administration, and oversight of the USF.[2] In this Report and Order, we address only a few of the issues raised in the *Program Management NPRM*. The remaining issues will be addressed in a subsequent Report and Order in this docket. Our goal in this proceeding is to improve the universal service programs and to make the programs more effective and efficient. We have sought input from all interested parties, including USF participants, in order to use their experience to improve the various aspects of the management, administration, and oversight of the USF. We are not evaluating the underlying policy considerations involved in administering the USF; instead, we are focusing on the mechanics of the programs.

5. As we discussed in the *Program Management NPRM*, the United States Government Accountability Office ("GAO") has investigated USF issues, most recently in the schools and libraries program.[3] One of the criticisms raised in the GAO 2005 E-Rate Report was that the Commission did not develop performance goals and measures of the E-rate program.[4] In this Report and Order, we discuss and adopt various performance measures for the universal service programs and the Administrator. We anticipate that the performance measures adopted herein will be the first step in establishing comprehensive performance measurements and goals for the universal service program and the program Administrator.

6. The Commission has taken action in previous proceedings to detect and deter waste, fraud, and abuse of universal service funds.[5] The measures we adopt in this Report and Order are part of our continuing process to deter misconduct and inappropriate uses of universal service funds. We will continue to strengthen the universal service program by combating waste, fraud, and abuse. We will also strive to improve this program through other means such as using relevant performance measures to

[2] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) ("*Program Management NPRM*"). Appendix A contains the list of commenters to the *Program Management NPRM*.

[3] GAO, Telecommunications, Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program, GAO-05-151 (Washington, D.C.: Feb. 9, 2005) ("GAO 2005 E-Rate Report").

[4] *See* GAO 2005 E-Rate Report at 19-26 (criticizing the Commission for failing to develop useful performance goals and measures for the E-rate program).

[5] *See, e.g., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) ("*Schools and Libraries Fifth Report and Order*"); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Schools and Libraries Second Report and Order*").

assess the programs periodically.

III. DISCUSSION

7. In 1998, the Commission appointed USAC the permanent Administrator of the federal universal service support mechanisms.[6] The Administrator performs numerous functions including, but not limited to, billing USF contributors, collecting USF contributions, disbursing funds, recovering improperly disbursed funds, processing appeals of funding decisions, submitting periodic reports to the Commission, maintaining accounting records, conducting audits of contributors and beneficiaries, and providing outreach to interested parties.[7] The Administrator is prohibited from making policy, interpreting unclear provisions of the statute or the Commission's rules, or interpreting the intent of Congress, and may only advocate positions before the Commission and its staff on administrative matters.[8]

8. The Commission appointed USAC the permanent Administrator "subject to a review after one year by [the Commission] to determine that the Administrator is administrating the universal service support mechanisms in an efficient, effective, and competitively neutral manner."[9] The Commission intended to review USAC's performance after one year; however, the one-year review did not take place.[10] In the *Program Management NPRM*, we sought comment on whether modifications to our rules are needed to ensure efficient, effective, and competitively neutral administration of the USF.[11] We also sought comment on how we could otherwise improve the Commission's oversight of the USF and management of the program.[12]

A. Strengthened Oversight

1. Contributor Delinquencies

9. In the *Program Management NPRM*, the Commission sought comment on whether it should adopt rules requiring timely payments and assessing penalties or interest for late payments.[13] The USF is supported by contributions from telecommunications carriers providing interstate services as well as contributions by certain providers of interstate telecommunications, including providers of Interconnected Voice over Internet Protocol ("Interconnected VoIP") services.[14] The Commission

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[6] 47 C.F.R. § 54.701(a); *see Changes to the Board of Directors of the National Exchange Carrier Association*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25069-70, ¶ 20 (1998) ("*USAC Appointment Order*").

[7] *See* 47 C.F.R. §§ 54.702(b)-(m), 54.711, 54.715.

[8] 47 C.F.R. §§ 54.702(c)-(d).

[9] 47 C.F.R. § 54.701(a).

[10] *See USAC Appointment Order*, 13 FCC Rcd at 25069-70, ¶ 20.

[11] *Program Management NPRM*, 20 FCC Rcd at 11314, ¶ 11.

[12] *Id.*

[13] *Id.*, 20 FCC Rcd at 11317, ¶ 19. Currently, USAC assesses a late filing fee for both the Form 499-A and 499-Q and a late payment fee. USAC Comments at 70.

[14] The Commission adopted universal service obligations for providers of interconnected VoIP services in *Universal Service Contribution Methodology*, WC Docket Nos. 06-122 & 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, & 98-170, & NSD File no. L-00-72, 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006).

requires USF contributors to provide certain revenue information on the FCC Form 499-A and the FCC Form 499-Q ("Telecommunications Reporting Worksheet" or "Worksheet") on a periodic basis.[15] A USF contributor must file the FCC Form 499-Q to determine its USF contributions, subject to an annual true up based on the FCC Form 499-A.[16] A contributor's failure to file the Worksheets or its submission of inaccurate or untruthful information causes delay, denies the use of funds for their intended purposes, and results in additional administrative costs. Our rules currently provide that such omissions or errors in the filing may result in an additional administrative assessment for "reasonable costs"[17] incurred by the USF administrator and it "may subject the contributor to the enforcement provisions of the Act and any other applicable law."[18] USAC has implemented this authority by assessing a one-time charge equal to .005 percent of the annual revenue for a late-filed Worksheet; with a minimum assessment of $100 and a maximum of $5,000. This corrective measure, however, does not provide sufficient incentive to contributors to comply with the reporting requirements, compensate the Administrator or the Commission for additional work involved, or compensate the universal service fund for the time value of money lost when the Worksheets are not filed and funds are not contributed in correct amounts. In addition, as we discuss below, these administrative charges imposed for late-filed Worksheets, as well as charges for late payments, are not consistent with commercial practices,[19] and may have become overly complex when considered together with other charges imposed for late payment. Accordingly, <u>as we discuss below, we will replace the late-filing charge, as well as the late-payment charges, with a new DCIA rate of interest that reflects the consequences of both types of failures and that is consistent with commercial practices, and designed to address the shortcomings we have identified in our current procedures</u>.

10. The revenue information provided on the quarterly Worksheets determines each entity's contribution to the USF[20] which is calculated according to the instructions for the Worksheets.[21] Monthly, the USF Administrator bills each USF contributor, based on its quarterly contribution amount and the USF contribution is due by the date shown on the invoice.[22] Because our rules do not condition

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[15] 47 C.F.R. § 54.711. Carriers file the quarterly worksheet, the FCC Form 499-Q, to show projected revenues. USAC bases a carrier's universal service contributions on the carrier's projected collected revenues. Carriers must submit their quarterly Worksheets no later than February 1, May 1, August 1, and November 1 of each year. *See* Quarterly Worksheet Form at 1. Carriers must submit their Annual Worksheets no later than April 1 of each year. *See* Annual Worksheet Form at 1. The complete filing schedule is also set forth in the instructions to the Annual Worksheet.

[16] Upon submission of a Form 499-A Worksheet, USAC issues a filer identification number to the carrier. This number is used to track the carrier's contributions and invoices.

[17] 47 C.F.R. § 54.713. ("The Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's filing of an inaccurate or untruthful worksheet, failure to file a worksheet, or late payment of contributions.")

[18] *Id. See* http://www.universalservice.org/fund-administration/contributors/revenue-reporting/late-filing-fees.aspx.

[19] A debtor that makes a payment late in effect unilaterally receives an extension of credit, which may or may not be accompanied by financial consequences, depending on the relative actions by the creditor.

[20] *See* 47 C.F.R. § 54.709(a).

[21] *See* "2006 FCC Form 499-A, Telecommunications Reporting Worksheet" at Instructions—page 1 "Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms," http://www.fcc.gov/Forms/Form499-A/499a-2006.pdf ("*2006 Telecommunications Reporting Worksheet Instructions*").

[22] 47 C.F.R. § 54.711(a). Contributors must pay by the due date shown on the invoice from the Administrator. 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its (continued....)

payment on receipt of an invoice, a carrier or other entity[23] which has more than *de minimis* revenues and is not otherwise exempt from contributing, is still required to contribute to the USF in a timely manner, even if it does not receive an advance billing notice from the USF Administrator.[24] Some USF contributors fail to make timely contributions and we are concerned that these failures harm the programs by denying the Administrator the use of the funds and by increasing the administrative costs of collecting the funds. Since 2004, USAC has transferred 1,725 cases involving approximately $95.7 million worth of delinquent USF contributions to the Commission for collection action.[25]

11. USAC's current practices are varied and perhaps incomplete. USAC has implemented several measures to reduce contributor delinquency and pursue debtors with outstanding contribution obligations.[26] Each month USAC notifies contributors that are delinquent and imposes late filing and late payment fees.[27] In addition to the fee for late filing described earlier, USAC applies a rate of interest, of seven percent, per year as a late payment fee based on the actual number of days by which payment is late, *i.e.*, from the date the payment was due until the date the payment is received, and nine percent, applied later as the rate of interest in a promissory note to repay debt under an approved installment payment plan. In imposing these interest rates USAC currently assesses contributors for reasonable costs incurred for the failure to file or pay on time;[28] but does not assess DCIA interest or penalties[29] in addition to these costs.[30] USAC mails 30, 60, and 90-day notifications to contributors who have previously submitted an FCC Form 499 but failed to submit subsequent FCC Form 499s.[31] USAC also notifies contributors after a missed due date for filing the FCC Form 499.[32] USAC states that it has a very low error rate in red light rule administration.[33] In addition, the Commission's Enforcement Bureau

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website the manner of payment and the dates by which payments must be made.") *See, e.g.*, "Proposed Third Quarter 2006 Contribution Factor," Public Notice, 21 FCC Rcd 6527 (Wireline Comp. Bur. 2006) ("Contribution payments are due on the dates shown on the invoice.")

[23] *See* 47 C.F.R. § 54.706(b).

[24] Providers whose annual USF contribution would be less than $10,000 are considered *de minimis* and exempt from contributing to the USF. 47 C.F.R. § 54.708.

[25] USAC Comments at 71.

[26] USAC Comments at 68.

[27] USAC Comments at 69. USAC assesses a late payment fee for contributors who have made a late payment for the invoice two cycles prior; late payment fees are calculated based on the number of days late, the amount of the outstanding balance, and an annual rate of seven percent. *See* http://www.universalservice.org/fund-administration/contributors/paying-your-invoice/late-payment-fees.aspx. In addition, USAC's form letter regarding delinquencies advises that interest will be charged on the unpaid principal balance at the rate of nine percent per annum. *See* http://www.universalservice.org/_res/documents/fund-administration/pdf/Payment%20Extension%20Plans/PP-Acknowledgement-letter-template-SOL.pdf.

[28] *See* 47 C.F.R. § 54.713.

[29] 31 U.S.C. § 3717.

[30] USAC Reply Comments at 12.

[31] USAC Comments at 69.

[32] USAC Reply Comments at 15.

[33] USAC Reply Comments at 17. Delinquent debt owed to the Commission or the USF triggers application of the "red light rule" which requires offsets or holds on pending disbursements. 47 C.F.R. § 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004); 47 C.F.R. Part 1,
(continued....)

has taken enforcement action against carriers for failure to make USF contributions and failure to file annual and quarterly Worksheets.[34]

12. Despite these measures, late filing and late payment persists. Late-filed or inaccurate annual and quarterly Worksheets harm the USF because the Administrator and the Commission are unable to project accurately both the contribution base and the contribution factor. Contributor delinquencies in payment deprive the universal service support mechanisms of the funds necessary to carry out the program's goals. The absence of a significant financial incentive to remedy late or inadequate payments shifts the resulting economic burden of the USF to the compliant contributors and to consumers to the extent that contributors pass-through their contribution assessments to end users,[35] affording delinquent contributors an unfair competitive advantage over contributors that make payments on a timely basis.[36] Moreover, the matrix of current fees and interest does not easily adapt to changes in commercial lending rates as demonstrated by USAC's current seven percent rate for its late payment fee, which was adopted by USAC's board in July 2006 and will remain in effect for two years or until otherwise changed by the board. We are also concerned that this late payment fee does not compensate the USF for the loss of its use of the money. In fact, because the seven percent late payment fee is lower than the U.S. prime rate, it may provide a disincentive to prompt payment while also failing to protect the government's interest. Moreover, the cost to both the Commission and USAC of monitoring the Worksheets and administering the panoply of collection and enforcement efforts and procedures are high and increasing, imposing an additional burden on human and capital resources of both the Commission and USAC that diverts limited valuable resources from other requirements. For these reasons, we adopt a single standard to be used in assessing late fees. In so doing, our rules will provide that DCIA interest corresponds to commercial practices and that the interest and penalties accrue at the earliest time, and thereby ensure that the standard invokes a remedial, consistent, sanction necessary to encourage complete and timely payment and filing.

13. The DCIA interest and penalties will compensate the USF for the time value of money,[37] and also facilitate enforcement action against carriers who have substantial delinquencies.[38] This will ensure, as well, that contributions to the USF are equitable and nondiscriminatory in that those who create additional administrative burdens will pay for them. Commenters addressing this issue agree and suggest that we should adopt reasonable administrative sanctions or interest for late-filed contributions

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Subpart O, Collection of Claims Owed the United States. USAC contends that its error rate in red light rule administration was 0.11 percent of total payments from January 2005 to October 2005. USAC Reply Comments at 17.

[34] *See, e.g., Globcom, Inc. d/b/a Globcom Global Communications*, Order of Forfeiture, 21 FCC Rcd 4710 (2006); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974 (2006); *BCE Nexxia Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 15121 (2005); *Telecom Management, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14151 (2005); *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307 (2005); *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13277 (2005); *OCMC, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14160 (2005); *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13291 (2005); *Global Teldata II, LLC*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 17264 (2005); *Communication Services Integrated, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 17251 (2005).

[35] *See* 47 C.F.R. § 54.712.

[36] *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903, ¶ 26 (2003).

[37] *See* 47 U.S.C. § 254(b)(4).

[38] USAC Comments at 70.

and FCC Form 499s.[39]

14. In addition, we have determined that a new DCIA interest rate higher than that Treasury rate currently assessed[40] is appropriate. Hence, under the rules we adopt today, we replace all late fees currently charged by USAC with the DCIA interest and penalties to be used in setting all remedial sanctions for late filing of USF work sheets and late payment of USF contributions. If a contributor is more than 30 days delinquent in paying its contribution to the USF, USAC shall assess a single rate of interest,[41] that will apply to the debt from the date of the delinquency until date of payment (or in the case of a promissory note the date of maturity of the note), at an annual rate equal to the U.S. prime rate on the date of delinquency plus 3.5 percent.[42] Likewise, if a contributor is more than 30 days delinquent in filing an FCC Form 499-A or 499-Q, the USF Administrator shall also use the U.S. prime rate plus 3.5 percent in assessing a remedial sanction. The sanction will be the greater of $100 per month or the amount derived when a rate of interest equal to the U.S. prime rate plus 3.5 percent is assessed on the amount due per the Administrator's invoice or calculations (if no invoice was provided).[43] In the event a contributor company is delinquent in filing an FCC Form 499-A or 499-Q, and within the 30 day period following delinquency, is also delinquent in paying its contribution, interest will be assessed on a single greater amount from the date of the first delinquency.[44]

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[39] Alexicon Comments at 8; BellSouth Comments at 11; CPS Comments at 6; NJ Board Comments at 8; NTCA Comments at 9; OPASTCO Comments at 16-17 (contending that delinquent carriers should get a warning before interest or penalties are assessed); Qwest Comments at 14-15. Commenters suggest that we adopt a "yellow light rule," as an intermediate step to allow document reconciliation for 30 days, when the Commission's records indicate that a carrier is delinquent. CenturyTel Comments at 3-6; NECA Comments at 21-22; USTelecom Comments at 8; Dobson Reply Comments at 23; NECA Reply Comments at 15-16; Qwest Reply Comments at 10-11; Sprint Reply Comments at 3; Verizon Reply Comments at 14.

[40] *See* 47 C.F.R. § 1.1940(b)(2).

[41] *See* http://www.universalservice.org/fund-administration/contributors/paying-your-invoice/late-payment-fees.aspx; http://www.universalservice.org/_res/documents/fund-administration/pdf/Payment%20Extension%20Plans/PP-Acknowledgement-letter-template-SOL.pdf. This new, single interest rate remains unchanged even while the debt may be transferred from USAC to the FCC and thereafter to Treasury for further collection efforts, and it will also be the rate applied to the total amount that may become the principal debt in any promissory note in any subsequent installment payment plan. As appropriate, the note may require a higher interest rate in the event of default.

[42] Currently, the U.S. prime rate (also referred to as the Wall Street Journal ("WSJ") Prime), as reported by the WSJ's bank survey is 8.25 percent. The rate is based on the fed funds rate set by the Federal Reserve, and reflects the rate of interest charged for short-term loans for creditworthy customers. Less creditworthy customers, as determined, in part, from their history of meeting financial obligations, may be charged correspondingly higher interest rates.

[43] The Administrator may not have mailed an invoice to an entity that has not filed Worksheets at all. Such companies, once discovered by the Administrator or the Commission, must file the unfiled Worksheets and pay the unpaid USF contributions, plus, under the rules we adopt today, any sanction plus other collection charges permitted by applicable law. The minimum sanction of $100 will, in most cases apply to a company whose revenues are at or below the *de minimis* level, and a *de minimis* company that files only a Form 499-A. In addition, the Commission may take enforcement action against such entities.

[44] Because the Form 499-A and Form 499-Q are due on the first day of a particular month (*see* footnote XX, above), and monthly contributions are due on the 15th day of the month, we anticipate that the failure to file the Worksheet and a subsequent failure to pay a contribution could result in separate interest assessments. We do not intend to duplicate the interest assessment, but rather establish that interest will accrue on whichever amount is greater, beginning with the earlier of the date of the failure to file or pay.

15. The DCIA interest rate we impose is a permitted increase[45] necessary to protect the government's interest. Interest rates, which compensate for the time value of money, may serve as incentives or disincentives to prompt payment. For example, if the monetary sanction for a late payment of an existing obligation is less than the fee incurred in borrowing a similar amount from a commercial lender, there is incentive to delay paying the existing obligation. Comparing USAC's existing practice with those of commercial lenders that extend credit where the risk of loss to the lender is substantially less because the note is guaranteed, *e.g.*, a loan guaranteed by the Small Business Administration, we note that the rates of interest in such loans exceed the rate USAC applies to delinquent debtors. Consequently, under existing practices, a creditworthy debtor repays a negotiated loan at a rate of interest higher than the interest rate imposed on a delinquent contributor.[46] Thus, an imbalance develops such that it costs less for a contributor to become delinquent in paying the USF than to borrow a like amount from a commercial lender. To remedy the imbalance, we base our threshold rate on the U.S. prime rate and add an additional rate of 3.5 percent. This additional rate includes consideration of the repayment risk, the time value of money, the cost of collection activities, and the need to instill in contributors the incentive to comply with requirements to complete the Worksheets and pay the contributions when due. The higher rate of interest we adopt today provides greater protection of government interests than does a piecemeal application of interest under the current procedures, and the rate conforms to 31 U.S.C. § 3717(g)(1) and its implementing rules. In addition, our Enforcement Bureau may pursue enforcement action against such delinquent contributor for this rule violation.[47]

16. Under the DCIA, we are required to impose interest on delinquent debts that remain unpaid more than 30 days, and penalties on delinquent debts that remain unpaid more than 90 days.[48] Thus, in addition to DCIA interest at the higher rate of U.S. prime plus 3.5 percent assessed by USAC, delinquent contributors will remain obligated to pay penalties as well as any additional administrative

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[45] 31 U.S.C § 3717(g)(1) ("This section [within the statute] does not apply -- (1) if a statute, regulation required by statute, loan agreement, or contract . . . explicitly fixes the interest or charges . . . ."); 31 C.F.R. § 901.9 ("Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States.") As noted herein, USAC's current interest rate and the rate suggested in 31 U.S.C. § 3717 are measurably low and act as a disincentive to timely payment.

[46] A contributor-debtor that fails to pay its USF obligations when due effectively receives immediate credit without having to subject itself to routine commercial underwriting guidelines that include, *e.g.*, consideration of credit worthiness, collateral and loan to value ratios, other credit lines, assets, and debt ratios. We have compared the USAC interest rate with rates applied by commercial lenders participating in loan programs guaranteed by federal and/or state agencies, and we conclude the USAC interest rate imposed on a risky debtor is lower than the rate commercial lenders apply to loans guaranteed by the Small Business Administration. We found that the commercial lender has less risk, but the rate of interest permitted on such guaranteed loans is higher than what is imposed by USAC. We conclude, in part, that a contributor-debtor may perceive an incentive to resolve cash flow problems by delaying payment rather than to seek out a commercial lender. For example, the commercial lender interest rate on a Small Business Administration-guaranteed "section 7(a)" loan is the WSJ Prime rate on the day of application plus (depending on the maturity date and loan amount) 2.25 percent to 4.75 percent. The maximum interest rate of Prime plus 4.25 percent applies to a loan of less than $25,000 that matures in less than seven years. *See* http://www.sba.gov/services/financialassistance/basics/sbarole/SERV_7A_INTRESTRATES.html. In similar situations, some states will lend to small businesses, *e.g.*, when the state of Montana loans funds, the interest rate depends on a combination of factors, but it *is not less than* the WSJ Prime plus three percent. *See* http://www.gatewayedc.org/BusinessFinance.htm.

[47] In any enforcement action, among the factors to consider would be the length of time the contributor was delinquent and whether the contributor made a good faith effort to resolve the delinquency with the Administrator through a payment plan.

[48] 31 U.S.C. § 3717.

costs of collection and other interest and administrative charges permitted by applicable law, as described in the next paragraph.[49] Thus, for example, additional administrative charges are imposed under the DCIA, when an account is transferred to the United States Department of Treasury.[50] We also adopt rules to codify the Administrator's practice of applying delinquent payments to a contributor's oldest past due amount.[51] Specifically, we are adhering to the "American Rule" whereby payment is applied first to outstanding penalty and administrative cost charges, next to accrued interest, and third to outstanding principal. Using this process, and applying a payment to the oldest outstanding principal, helps to keep to a minimum the number of accounts transferred under the DCIA for collection efforts by the Commission.[52] Our actions today will also help clarify, for statute of limitations purposes, the amount of time a contributor's debt is outstanding.

17. In addition to the rules we adopt herein, we require the Administrator to add information to the monthly invoice sent to contributors and in debt collection correspondence sent to delinquent debtors that explains the applicable sanction and administrative charges for late payment, *i.e.*, under 31 U.S.C. § 3717 a delinquent debt that is not paid in full within 30 days from the due date will incur interest, and if not paid within 90 days from the due date will also incur a penalty; and, in addition, the delinquent contributor will be assessed the administrative costs of collection pursuant to section 54.713 of our rules. Each monthly invoice should include the language pertaining to the DCIA, substantially as follows:

> A failure to submit payment may result in sanctions, including, but not limited to, the initiation of proceedings to recover the outstanding debt, together with any applicable administrative charges, penalties, and interest pursuant to the provisions of the Debt Collection Act of 1982 ("Public Law 97-365") and the Debt Collection Improvement Act of 1996, ("Public Law 104-134") as amended (the "DCIA"), as set forth below.
>
> The date of payment on the invoice is the due date. If full payment is not received by the date due, the debt is delinquent. Because the unpaid amount is a debt owed to the United States, we are required by the DCIA to impose interest and to inform you what may happen if you do not pay the full outstanding debt. Under the DCIA, the United States will charge interest at the annual rate equal to the U.S. prime rate as of the date of delinquency plus 3.5 percent from the date the contribution was due. This interest rate incorporates administrative charges of collection pursuant to 47 C.F.R. § 54.713. If the debt remains unpaid more than 90 days, you will be charged an additional penalty of 6 percent a year for any part of the debt that is more than 90 days past due. If the debt remains unpaid, the full amount of the outstanding debt may be transferred to the United States Department of Treasury ("Treasury") for debt collection, and you will be required to pay the administrative costs of processing and handling a delinquent claim as set by the Treasury (currently 28 percent of the debt) However, if you pay the full amount of the

[49] *See* 31 U.S.C. § 3717; 31 C.F.R. § 285.12(j).

[50] Periodically, Treasury adjusts its administrative charges. At present, Treasury assesses an administrative charge equal to 28 percent of the amount of the debt transferred.

[51] *See* USAC Comments at 71. It is USAC's practice to apply partial payments to the oldest debt carried on USAC's books first, and not to the current billed amount. *See North American Telephone Network*, LLC, Forfeiture Order, 16 FCC Rcd 4838, ¶ 8 & n.12 (2001); *Intellicall Operator Services*, Forfeiture Order, 15 FCC Rcd 21771, 21772, ¶ 6 and n.8 (2000). USAC contends that codification of this practice is not necessary. USAC Reply Comments at 11. We choose to codify this practice so that all entities are aware of it and to clarify that this practice must be implemented in accord with the American Rule described herein.

[52] *See* USAC Comments at 71.

outstanding debt and associated administrative fees and penalties within 30 days of the due date, the DCIA interest will be waived. These requirements are set out at 31 U.S.C. § 3717.

18. In addition to the above, the invoice shall state clearly the date that the invoiced amount is due, and if not paid in full on or before that date, the debt will be delinquent. If the identified due date is a non-business date, the invoice will state clearly the date by which payment must be received to avoid delinquency. Finally, an invoice sent after a partial payment should show clearly that the payment was applied to outstanding penalties, administrative costs, accrued interest, and then to oldest outstanding principal. These changes will leave contributors with no doubt as to amounts owed and will encourage payment of delinquent debts.

2. Annual Independent Audits

19. Audits are a tool for the Commission and the Administrator, as directed by the Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse.[53] Audits can reveal violations of the Act or the Commission's rules.[54] Commission rules authorize the Administrator to conduct audits of contributors to the universal service support mechanisms.[55] USAC's audit program consists of audits by USAC's internal audit division ("IAD") staff as well as audits by independent auditors under contract with USAC.[56] In addition, the Commission's OIG conducts audits of USF program beneficiaries.[57] In the *Program Management NPRM*, we sought comment on whether the Commission should institute a targeted independent audit requirement to further safeguard the universal service program against waste, fraud, and abuse.[58] For the reasons discussed below, we conclude that an additional audit requirement is unnecessary at this time.

20. We agree with the majority of commenters addressing this issue that an audit requirement can assist in deterring or uncovering waste, fraud, and abuse in the universal service programs.[59] Greater frequency and intensity of independent audits in all programs would be beneficial and reduce waste, fraud, and abuse.[60] Waste, fraud, and abuse can occur in all of the universal service programs.[61]

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[53] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15813, ¶ 13. *See also* GAO 2005 E-Rate Report at 31.

[54] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15813, ¶ 13.

[55] 47 C.F.R. § 54.707 ("the Administrator shall have the authority to audit contributors and carriers . . . .") In addition, the USF Administrator is audited annually. *See* 47 C.F.R. § 54.717.

[56] 47 C.F.R. § 54.516.

[57] KPMG LLP recently completed its last round of one hundred schools and libraries audits, under the OIG's oversight. Over $11 million in improper payments were identified and USAC is currently in the process of recovering these funds.

[58] *Program Management NPRM*, 20 FCC Rcd at 11336-37, ¶ 68.

[59] *See, e.g.*, ALA Comments at 34; CCSSO Comments at 7-8; Dobson Comments at 14-15; GCI Comments at 31-32; GVNW Comments at 16-17 (observing that the audit sample should not contain a large number of small carriers); M-DCPS Comments at 16; NYSED Comments at 3; On-Tech Comments at 9; Qwest Comments at 35; AASA Reply Comments at 7; Dobson Reply Comments at 12. Several commenters suggest that we assess USAC's site visit program before imposing audit requirements. *See, e.g.*, ESPF Comments at 17; Kellogg Comments at 18.

[60] Alexicon Comments at 15.

[61] For example, Cass County Telephone Company, a rural incumbent LEC in Missouri, was involved in defrauding USAC and NECA. For a description of this incident, *see* MoPSC Comments at 5-7.

21. Since we released the *Program Management NPRM*, the Commission's OIG has started overseeing 460 audits of contributors and beneficiaries of the high-cost, low-income, rural health care, and schools and libraries programs.[62] The audits are designed to fulfill the requirements mandated by the Improper Payments Information Act of 2002 ("IPIA").[63] These audits, which have already begun, are conducted on a statistical sample of the beneficiaries of each of the four USF programs.[64] These audits will provide a baseline from which the Commission can determine where targeted audits are necessary in the future. We will continue to evaluate appropriate audit oversight for the USF program and expect that a rigorous audit program on a going forward basis will be implemented once the 460 audits are completed.

3. Document Retention Requirements

22. In the *Program Management NPRM*, we sought comment on whether we should adopt a document retention requirement for applicants and service providers in all USF programs.[65] We adopted a five-year record retention requirement for the E-rate program in the *Schools and Libraries Fifth Report and Order*.[66]

23. Commenters suggest that fund recipients should be required to retain documents in accordance with normal business practices (*e.g.*, seven years for tax purposes)[67] or that records be retained only for two or three years.[68] Commenters propose that the Commission not extend document retention requirements to the high-cost and low-income mechanisms because there is no evidence that a greater document retention requirement is necessary.[69] We conclude that recordkeeping requirements not only prevent waste, fraud, and abuse, but also protect applicants and service providers in the event of vendor disputes.[70] We clarify that we require that information necessary to determine compliance with this Commission's rules and regulations be available to the Administrator, its auditors, and Commission personnel upon request, for all USF programs. We reach the following conclusions on document retention standards for the high-cost, low-income, schools and libraries, and rural health care programs after reviewing each program individually:

24. *High-cost program.* We will require recipients of universal service support for high-cost providers to retain all records that they may require to demonstrate to auditors that the support they received was consistent with the Act and the Commission's rules, assuming that the audits are conducted

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62 *See* Office of the Inspector General, Semiannual Report to Congress, Apr. 1, 2006 - Sept. 30, 2006 ("Sept. 2006 Semiannual Report") at 9.

63 Improper Payments Information Act of 2002, Pub.L.No. 107-300, 116 Stat. 2350 (2002).

64 Sept. 2006 Semiannual Report at 10.

65 *Program Management NPRM*, 20 FCC Rcd at 11342-43, ¶¶ 84-85.

66 *See Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15823-24, ¶ 47; *see also* GAO 2005 E-Rate Report at 32 ("record retention is fundamental to an audit trail").

67 GVNW Comments at 17-18.

68 Dobson Cellular Comments at 17. IDT contends that anything more than three years would be burdensome. IDT Comments at 13; IDT Reply Comments at 10.

69 BellSouth Comments at 22-23; USTelecom Comments at 5; Verizon Comments at 29.

70 *See Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15823-24, ¶ 47. *See also Program Management NPRM*, 20 FCC Rcd at 11342, ¶ 83.

within five years of disbursement of such support.[71] These records should include without limitation the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation.[72] We clarify that beneficiaries must make available all such documents and records that pertain to them, including those of NECA, contractors, and consultants working on behalf of the beneficiaries to the Commission's OIG, to the USF Administrator, and to their auditors. Some commenters propose that we set document retention requirements for two to seven years;[73] however, we conclude that five years, as proposed by USAC,[74] and consistent with the rules we adopted for schools and libraries and rural health care providers, is a reasonable standard that will better serve the public interest. The use of true-ups and documentation of historical costs inclines us to err on the side of a longer, rather than shorter, period. To the extent other rules or any other law require or necessitate documents be kept for longer periods of time (*e.g.*, to support the account balances in the Part 32 Uniform System of Accounts, continuing property records, pole attachment calculations, plant equipment age, cost, or useful life, depreciation rates), we do not alter, amend, or supplant such rule or law.[75] High cost program recipients must keep documents for such longer periods of time as required or necessary under such other rules or law and make such documents available to the Commission and USAC.

25. *Low-income program.* With respect to the low-income universal service programs – Lifeline and Link-Up – we conclude that we should maintain the current two-tiered document retention requirements.[76] Although some commenters propose durations of two to seven years,[77] they do not offer good reasons for altering the existing three-year requirement. We also conclude that it is not unnecessarily burdensome to expect participating service providers to retain a record verifying the eligibility of a recipient of the program for as long as the recipient continues to receive supported service and three years more, and to make it available in conjunction with any audit to which it may be relevant. We think that a three-year extension of the current standard is necessary to permit audits made of funding provided three years earlier. We also agree with USAC's proposal that we remove the clause that waives the requirement to retain documentation of eligibility once an audit is completed.[78] We conclude that requiring retention of this material even after audits are completed is in the public interest. We find that the burden of requiring the material to be retained for three years after the subscriber terminates service is minimal. Without this requirement, the Commission would have difficulty in completing future audits

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[71] *Cf.* the five-year statute of limitations for violations of section 220(d) of the Act. 47 C.F.R. § 1.80(c)(2).

[72] These record retention requirements apply to all agents of the recipient, including, without limitation, NECA, and any documentation prepared for or in connection with the recipient's high cost benefits.

[73] *See* GVNW Comments at 17-18 (seven years); Dobson Comments at 18-19 (two years); NTCA Reply Comments at 6 (three years). We also note that USTelecom opposes any expansion of current document retention standards, *see* USTelecom Comments at 4-5.

[74] *See* USAC Comments at 229-30.

[75] *See, e.g.*, 47 C.F.R. 32.2000.

[76] 47 C.F.R. § 54.417(a) (requiring maintenance of records for the three full preceding calendar years and requiring carriers to retain documentation for as long as the customer receives Lifeline service from the ETC or until audited by the Administrator).

[77] *See* GVNW Comments at 17-18 (seven years); Dobson Comments at 18-19 (two years); NTCA Reply Comments at 6 (three years).

[78] *See* USAC Reply Comments at 96-97.

if substantial portions of the needed documentation were missing, particularly given that the eligibility of some subscribers to participate in the program may change multiple times. We also clarify that beneficiaries must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's OIG, to the USF Administrator, and to auditors working on their behalf.

26. *Rural health care and schools and libraries programs.* Based on this record, we conclude that we should retain the requirement that rural health care providers and schools and libraries retain for five years their records evidencing that the funding they received was proper.[79] Although commenters suggest that we consider durations ranging from two to seven years,[80] we find that the five-year requirement in place now for the rural health care program and the E-rate program, is reasonable and we see no good reason to modify it. We also conclude that, just as the E-rate program five-year record retention rule also applies to service providers,[81] this requirement should also apply to the service providers that receive support for serving rural health care providers. After all, the danger of waste, fraud, and abuse by service providers is as great as the danger of such conduct by rural health care providers. We also clarify that beneficiaries must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's OIG, to the USF Administrator, and to their auditors.

27. *Contributors.* We also require contributors to the USF to retain all documents and records that they may require to demonstrate to auditors that their contributions were made in compliance with the program rules, assuming that the audits are conducted within five years of such contribution. We clarify that contributors must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's OIG, to the USF Administrator, and to their auditors. These documents and records should include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. We align this record retention requirement along the same lines as those adopted for the schools and libraries, rural health care, and high-cost program beneficiaries, *i.e.*, a five-year period.

4. Administrative Limitations Period

28. In the *Program Management NPRM*, we sought comment on the establishment of an administrative limitations period in which the Commission or the Administrator will determine that a violation has occurred among recipients of funds from the high-cost, low-income, and rural health care universal service support mechanisms.[82] The administrative limitations period sets forth the time frame for audits and investigations. In the *Schools and Libraries Fifth Report and Order*, we adopted a policy that any inquiries to determine whether statutory or rule violations occurred will be initiated and completed within a five-year period after final delivery of service for that funding year.[83] A general policy in this area for all USF programs would provide these participants with some certainty of the time within which an audit or further review of funding may occur. We emphasize that the administrative limitations period discussed here is not a statute of limitations for pursuing enforcement action or

[79] 47 C.F.R. §§ 54.516(a), 54.619(a).

[80] *See* GVNW Comments at 17-18 (seven years); Dobson Comments at 18-19; Dobson Reply Comments at 22.

[81] 47 C.F.R. § 54.516(a)(2).

[82] *Program Management NPRM*, 20 FCC Rcd at 11343-44, ¶¶ 86-88.

[83] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15818-19, ¶ 32.

prosecuting a service provider or beneficiary.[84]

29. Commenters suggest that the Commission should establish an administrative limitations period for audits and that any "normal" audit or investigation should be limited to a twelve-month period after the audit or investigation has commenced; if fraudulent activity is discovered, the twelve-month cycle could be waived or the audit extended.[85] One commenter suggests that audits conducted on recipients of high-cost and low-income support should be subject to a period that is no longer than three years.[86] We are not convinced that the administrative limitations period for these programs should be less than the period for the schools and libraries program. We are therefore adopting a five-year standard for the other USF programs. This time period appropriately balances the beneficiary's need for finality and our need to safeguard the USF programs from waste, fraud, and abuse.

5. Recovery of Funds

30. In the *Program Management NPRM*, we sought comment on whether to establish specific rules or criteria to address instances in which a USF beneficiary may not have used funds in accordance with program procedures.[87] In addition, we sought comment on whether, consistent with the conclusions in the *Schools and Libraries Fifth Report and Order*, amounts disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of the statute or Commission rule must be recovered in full. Waste, fraud, and abuse of the USF programs harm all program participants by reducing the amount of available funds. Consistent with our conclusion regarding the schools and libraries program, funds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered.[88] Sanctions, including enforcement action, are appropriate in cases of waste, fraud, and abuse, but not in cases of clerical or ministerial errors.[89]

6. Debarment

31. There have been several well-publicized cases of fraud against the schools and libraries program.[90] In order to prevent fraud, and to prevent bad actors from continuing to participate in this program, the Commission adopted a debarment rule. The Commission's current debarment rule provides

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[84] We note, however, that under our rules a notice of apparent liability must be issued within five years of a violation of sections 202(c), 203(e), and 220(d) of the Act. 47 C.F.R. § 1.80.

[85] GVNW Comments at 18; IDT Comments at 11; Dobson Reply Comments at 21-22.

[86] USTelecom Comments at 5.

[87] *Program Management NPRM*, 20 FCC Rcd at 11344, ¶ 89.

[88] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15815, ¶¶ 18-30 (examples of rule violations for which recovery should be sought).

[89] *See, e.g.*, AEWG Comments at 13; GVNW Comments at 18; Trillion Comments at 7; USTelecom Comments at 7; *see also Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File No. SLD-487170, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) ("*Bishop Perry Order*").

[90] *See, e.g.*, "Waste, Fraud, and Abuse Concerns with the E-Rate Program," Subcommittee on Oversight and Investigations, Bipartisan Staff Report for the use of the Committee on Energy and Commerce (Oct. 18, 2005) (discussing substantial waste of E-rate funds in the Puerto Rico school system; fraud committed by the San Francisco Unified School District employees and NEC Business Network Solutions, Inc.; wasteful funding for the El Paso Independent School District; improper stockpiling of $8.5 million worth of E-rate program inventory purchased by the Chicago Public Schools from SBC Telecommunications; and improper stockpiling of more than $4.5 million in E-rate program inventory by the Atlanta Public Schools).

that the Commission shall suspend and debar parties from the E-Rate program who are convicted of criminal violations or held civilly liable for acts arising out of participation in the schools and libraries program, absent extraordinary circumstances.[91] Debarment is for three years, although the rules contemplate that the Commission might modify the period in particular circumstances; the Commission might lengthen the period if necessary to protect the public interest[92] and it might reverse or limit the scope or period of debarment "upon a finding of extraordinary circumstances."[93] Several parties have been debarred under this rule by our Enforcement Bureau or the Commission.[94]

32. In the *Program Management NPRM*, we tentatively concluded that we should establish more aggressive sanctions and debarment procedures in all universal service programs.[95] We adopt our tentative conclusion. Debarment of applicants, service providers, consultants, or others who have defrauded the USF is necessary to protect the integrity of the universal service programs.[96] We do not find any reason to exclude the high-cost, rural health care, or low-income programs from our debarment rules. Parties who are convicted of criminal violations or held civilly liable for acts arising out of participation in those programs should be treated in the same manner as parties who are convicted of criminal violations or held civilly liable for acts arising out of participation in the schools and libraries program. For these reasons, we adopt our tentative conclusion to expand the scope of the debarment process to include all USF programs.[97] Therefore, we revise our rules to include debarment from all USF programs for parties convicted of or held civilly liable for, the commission or attempted commission of fraud and similar offenses. In addition, we also agree with the commenters proposing that the debarred

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[91] 47 C.F.R. § 54.521(b).

[92] 47 C.F.R. § 54.521(g).

[93] 47 C.F.R. § 54.521(f).

[94] *See, e.g.*, Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Oscar Alvarez, Connect2 Internet Network, Inc., Notice of Debarment, 18 FCC Rcd 16668 (2003); Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Angelides, Connect2 Internet Network, Inc., Notice of Debarment, 18 FCC Rcd 26722 (2003); Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Duane Maynard, Howe Electric, Inc., Notice of Debarment, 18 FCC Rcd 26729 (2003); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Dotson, Notice of Debarment, 19 FCC Rcd 23636 (2004); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Henry Weaver, Notice of Debarment, 20 FCC Rcd 10925 (2005); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Haider Bokhari, Notice Debarment, 20 FCC Rcd 10941 (2005); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Qasim Bokhari, Notice of Debarment, 20 FCC Rcd 10931 (2005); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Ronald R. Morrett, Notice of Debarment, 20 FCC Rcd 14321 (2005); *Inter-Tel Technologies, Inc.*, Notice of Debarment, 21 FCC Rcd 7506 (2006); *NEC Business Network Solutions, Inc.*, Notice of Debarment and Order Denying Waiver Petition, 21 FCC Rcd 7491 (2006); *Premio, Inc.*, Notice of Debarment, 22 FCC Rcd 1019 (2007); *NextiraOne, LLC*, Notice of Debarment and Order Denying Waiver Petition, 22 FCC Rcd 1005 (2007).

[95] *Program Management NPRM*, 20 FCC Rcd at 11348, ¶ 98.

[96] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225, ¶ 66 (2003).

[97] Commenters addressing this issue agreed with our tentative conclusion. *See, e.g.*, AASA Comments at 18; CPS Comments at 29; Dobson Comments at 19-20; ESPF Comments at 21 (contends that the Commission should conduct a separate rulemaking on this issue); GCI Comments at 36; OIG Comments at 8.

entities should be listed on the Commission's and the Administrator's website.[98] The USF Administrator should provide a link from its website to the Bureau and Commission debarment orders listed on our website.

33. The *Program Management NPRM* and the *Schools and Libraries Second Report and Order* also requested comment on other options for improving and extending application of the debarment rules now applicable only to the E-Rate program. Comment was requested on various issues, including the advisability of adopting the government-wide non-procurement debarment rules, procedures to address debarment or other sanctions for willful or repeated violations, the types of violations that should trigger debarment or other sanctions, and procedures to notify schools and libraries of which entities have been debarred.[99] To the extent that these issues, and others raised in those orders, are not addressed here, we plan to address them in a subsequent order.

B. Performance Measures

1. Background

34. The Government Performance and Results Act ("GPRA") of 1993[100] established statutory requirements for federal agencies to engage in strategic planning and performance measurement. GPRA is intended to improve efficiency and effectiveness of federal programs through the establishment of specific goals for program performance. GRPA has three main requirements. Federal agencies must develop strategic plans with long-term, outcome-related goals and objectives,[101] develop annual goals linked to the long-term goals,[102] and measure progress toward the achievement of those goals in annual performance plans and report annually on their progress in program performance reports.[103]

35. In recent years, the Office of Management and Budget ("OMB") has built upon GPRA through its Program Assessment Rating Tool ("PART"). OMB's PART guidance sets forth three types of performance measures: outcome measures, output measures, and efficiency measures.[104] Outcome measures "describe the intended result from carrying out a program or activity."[105] Output measures describe the level of activity, such as applications processed, number of housing units repaired, or number of stakeholders served by a program. Efficiency measures capture a program's ability to perform its function and achieve its intended results relative to the resources expended.[106] These performance

[98] CGCS Comments at 12; CPS Comments at 28; EdLiNK Comments at 22; Kellogg Comments at 22; NYSED Comments at 4.

[99] *Program Management NPRM*, 20 FCC Rcd at 11348, ¶¶ 97-98; *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9235, ¶¶ 102-115.

[100] Government Performance and Results Act of 1993, Public Law No. 103-62.

[101] 5 U.S.C. § 306.

[102] *Id.*; 31 U.S.C. § 1115.

[103] 31 U.S.C. §§ 1115 – 1116.

[104] *See* Memorandum from Clay Johnson III, Deputy Director for Management, Office of Management and Budget, to Program Associate Directors, Budget Data Request No. 04-31 (Mar. 22, 2003) ("*OMB PART Guidance Memorandum*"); http://www.whitehouse.gov/omb/part/index.html. The most current PART guidance, referred to herein as "2007 PART Guidance," is: http://www.whitehouse.gov/omb/part/fy2007/2007_guidance_final.pdf.

[105] *See* 2007 PART Guidance at 8.

[106] The 2007 PART Guidance states that "[m]eaningful efficiency measures consider the benefit to the customer and serve as indicators of how well the program performs." *Id.* at 10.

measurements should be intrinsically linked to the purpose of the program and the strategic goal to which it contributes.[107] The GAO has also published a number of reports addressing the use of performance measures in the management of government programs.[108]

36. In the GAO 2005 E-Rate Report, the GAO observed that the Commission was responsible under GPRA for establishing the E-rate program's long-term strategic goals and annual goals, despite the fact that the Act does not include specific goals for the universal service programs.[109] In the *Program Management NPRM*, the Commission sought comment on establishing useful outcome, output, and efficiency measures for the USF mechanisms, as well as for the administration of the program.[110] Below, we adopt performance measures for each USF mechanism. As we describe in more detail below, we adopt certain outcome measurements for ascertaining the program goal of connectivity by determining the level of connectivity in schools and libraries. We also adopt output measurements for evaluating the effectiveness of the four USF programs. We adopt certain output measurements for reviewing the performance of the USF Administrator in a more general way, apart from the administration of each program. We anticipate increasing our performance measures and adopting goals for the USF programs as we, and the USF Administrator, gain experience with these measurements.

37. Except as otherwise provided, performance measurements for the schools and libraries and rural health care programs must be reported to the Commission by the Administrator on an annual basis; all other performance measurements must be reported to the Commission on a quarterly basis, at the time of the contribution factor filing. No later than at each filing date, the USF Administrator shall also update past filings for any errors or new data. For material errors, as defined by the Commission, the USF Administrator shall notify the Commission's Chief Financial Officer ("CFO") and update filings within 72 hours of the notification to the CFO.

2. Schools and Libraries

38. A critical goal of our universal service program is to increase access to advanced telecommunications services and ensure that affordable telecommunications services are available and accessible to underserved segments of our society, including eligible schools and libraries, low-income consumers, rural health care providers, and consumers living in high-cost areas.[111] As we discussed in the *Program Management NPRM*, the statutory goal of the schools and libraries program is to ensure the delivery of affordable telecommunications and advances services to eligible schools and libraries for educational purposes.[112] With respect to Internet access, there is nearly 100 percent connectivity for public schools.[113] According to the National Center for Education Statistics ("NCES"), by 2005, nearly

[107] *Id.* at 8-9.

[108] *See, e.g.*, Government Accountability Office, *Effectively Implementing the Government Performance and Results Act* (Jun. 1996); *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, GAO-04-38 (Mar. 2004); *Managing For Results: Enhancing Agency Use of Performance Information for Management Decision Making*, GAO-05-927 (Sept. 2005).

[109] GAO 2005 E-Rate Report at 19.

[110] *Program Management NPRM*, 20 FCC Rcd at 11318-322, ¶¶ 24-31.

[111] 47 U.S.C. § 254(b).

[112] *Program Management NPRM*, 20 FCC Rcd at 11319-320, ¶ 26, citing 47 U.S.C. § 254(h).

[113] This includes schools that received E-Rate funding and those that did not. *See* GAO 2005 E-Rate Report at 21. Due to this high level of connectivity, simple measures of Internet connectivity will not be a useful indicator of the E-rate program's performance. *Id.* at 25.

100 percent of public schools in the United States had Internet access.[114] In 2005, 94 percent of public school instructional classrooms had Internet access, compared with three percent in 1994.[115] In addition, 97 percent of the public schools with Internet access used broadband connections to access the Internet.[116]

39. We agree with the commenters that the Commission should further measure the level of connectivity.[117] Commenters suggest, and we agree, that the Commission is not in a position to evaluate the impact of E-rate funds on connectivity as compared to other funding sources.[118] We also agree with the commenters that it would be difficult to try to determine the impact of E-rate funds, as opposed to other funds, on learning.[119] As the commenters observe, there are too many variables involved in educational achievement; Internet access is but one of many educational resources for students and teachers.[120] We do not have sufficient data at this time to establish goals for these performance measures. The performance measures we adopt should help us improve the productivity and efficiency of the E-rate program. We will continue to review this area and evaluate the effectiveness of the measures we adopt today.

a. Connectivity

40. USAC has initiated a program of "site visits" to USF beneficiaries.[121] The site visits include a physical inspection of equipment and services purchased with E-rate funds. USAC observes that the contractor already requests specific information about schools' and libraries' connectivity during site visits and during audits.[122] We recognize that the results from these site visits and audits will not be statistically valid; they will, however, provide us with useful information about a large percentage of the program applicants that can be used to improve the program or the application process. Therefore, the

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[114] "Internet Access in U.S. Public Schools and Classrooms: 1994-2005," U.S. Dept. of Education, Institute of Education Sciences, NCES 2007-020, at 4. There have been virtually no differences in the number of public schools with Internet access since 1999. *Id.*

[115] *Id.* Broadband connections included T3/DS3, fractional T3, T1/DS1, fractional T1, and cable modem connections. *Id.* at note 1.

[116] *Id.* at 5.

[117] ALA Comments at 32; CCSSO Comments at 3-4; Council Comments at 10; CPS Comments at 9; EdLiNC Comments at 10-12; ESPF Comments at 4-5; ISTE Comments at 8; Kellogg Comments at 5 (information about the technology installed is collected in the Form 471, Block 3); LAUSD Comments at 3; M-DCPS Comments at 16; NJ Board Comments at 10; NREAC Comments at 2-3; NYSED Comments at 3; PSTC Comments at 3; SECA Comments at 63-66; USAC Comments at 85; WVDE Comments at 3-4; AASA Reply Comments at 3; ISTE Reply Comments at 7-17 (recommends one gigabit connections in schools within the next three to five years).

[118] *See, e.g.*, AASA Comments at 8; CDE Comments at 5; CPS Comments at 10; Wisconsin Comments at 4.

[119] *See, e.g.*, WVDE Comments at 3-4; AASA Reply Comments at 3-4; ISTE Reply Comments at 17. FTI observes that the goal of the E-rate program is access to advanced telecommunications services and we should not attempt to measure educational achievements in order to measure the goals of the universal service fund. FTI Reply Comments at 2.

[120] CPS Comments at 9-10; ISTE Comments at 12; NREAC Comments at 3.

[121] USAC Comments at 87. *See* USAC's website at http://www.usac.org/sl/about/site-visits/default.aspx. The site visits are also described in the GAO 2005 E-Rate Report at 35.

[122] USAC Comments at 87-88. *See* Letter from Richard Belden, Chief Operating Officer, USAC to Marlene H. Dortch, Secretary and Mark Stone, Deputy Managing Director, Office of the Managing Director, FCC, Mar. 21, 2007.

USF Administrator should provide us with a summary of the connectivity issues discussed during site visits.

41. Currently, USAC obtains certain basic information from applicants applying for E-rate funding about their Internet connectivity, but does not analyze the responses in the aggregate.[123] Blocks 2 and 3 of the FCC Form 471 contain sections asking schools and libraries to provide: (1) the number of connections they have to dial-up access; (2) the number of buildings served by broadband services and whether the speed of this broadband service is less than 10 mbps, between 10 and 200 mbps, or greater than 200 mbps; (3) the number of direct connections to the Internet; (4) the number of classrooms or buildings with Internet access; and (5) the number of computers or other devices with Internet access.[124] It also asks how these numbers will change after the services are ordered.[125] The Commission also is currently conducting inquiries to examine issues such as the definition of broadband and the speeds and other data which the Commission may want to collect in the future. We anticipate that the Commission will update the data it collects from E-rate recipients to comport with the changes that result from these proceedings.

42. As noted above, nearly all schools have Internet access, and most of those schools are using broadband connections.[126] We do not have, however, a good understanding of the different types or capacities of broadband services that are supported through the E-rate program. The collection of this type of information from E-rate program participants will enable the Commission to determine how the E-rate program can better meet the needs of applicants. Therefore, we require the Administrator to continue to measure and to report to the Commission broadband connections provided to program participants, including the number of buildings served by broadband services and the bandwidth of these services. We further require the Administrator to work with the Wireline Competition Bureau ("Bureau") to modify the relevant FCC forms or to create additional questions for program participants to more accurately determine how schools and libraries connect to the Internet and their precise levels of connectivity. The collections of such additional information will enable the Commission to identify the specific products, services, and capabilities (*e.g.*, T-1s, DS-3s) at specific quantities provided via the E-rate program.

43. We also agree with USAC's suggestion to cross-reference participating school districts with a full listing of school districts to identify the public schools that are not participating in the E-rate program in order to focus outreach on these schools.[127] Commenters observe that the least sophisticated applicants, with the greatest needs, may be discouraged from participating in the E-rate program due to the cumbersome application process.[128] The Administrator should investigate the issue of nonparticipating eligible schools further by contacting a sample of the economically disadvantaged schools and libraries that choose not to participate in the E-rate program. The Administrator should determine why these schools and libraries choose not to participate and assist them, if necessary, in the beginning of the application process. The Administrator should report its conclusions to the Commission annually.

[123] *See* Schools and Libraries Universal Service Description of Services Ordered and Certification Form 471, OMB 3060-0806 (November 2004) ("FCC Form 471") at 2.

[124] *Id.*

[125] *Id.*

[126] 1995-2005 NCES Study at 14, 18.

[127] AASA Comments at 9; USAC Comments at 88-90.

[128] CTIA Comments at 12; HITN Comments at 3; ALA Reply Comments at 2-3; Illinois Reply Comments at 1-3.

b. Application Processing

44. *Application processing time and number of applicants.* In the *Program Management NPRM*, we sought comment on performance measures related to application processing.[129] Many commenters state that the timing of application processing is one of their biggest concerns.[130] Commenters suggest various measures and deadlines, such as requiring that USAC process at least 90 percent of applications and funding commitments by June 1 prior to the start of the funding year.[131] Therefore, we are requiring the Administrator to provide data, on a funding year basis, reporting the number of applications and funding request numbers ("FRNs") submitted, the number of applications and FRNs rejected, the number of applications and FRNs granted, and the processing time for applications and FRNs. At this time, we will not impose processing deadlines or requirements on the Administrator, although we may impose deadlines or targets in the future, if necessary. The measurements we seek here should provide us with more information about certain application-related tasks and may help us and the Administrator find ways to be more efficient.

45. We recognize that some applications may be very large or problematic, and will be more time consuming for the Administrator than the average application. In many cases, these applications cannot be processed without significant further input from the applicant.[132] The Administrator may need to request further information from the applicant or may need to investigate possible rule violations or fraud.[133] Our adoption of these performance measures should not affect in any way the Administrator's contacts with applicants to facilitate application processing. In reporting the results of this performance measurement, the Administrator will disaggregate the data to group the complex applications separately and separate the applications by amount of support requested. We recognize that completing application processing by July 1 may be a reasonable goal for average applications or for Priority One applications but may be an unrealistic goal for all applications. In the future, we may revisit this performance measure and require the Administrator to disaggregate the data in other ways.

Performance Measurements for Applications, per funding year

- Number of eligible applicants served and their discount rate;[134]
- Number of applications and FRNs submitted;
- Average (mean) processing time and percent of applications and FRNs completed by June 1; measured from the date of receipt to the date of commitment or denial;
- Processing time for fastest 50 percent, 75 percent, and 100 percent of the applications and FRNs;

[129] *Program Management NPRM*, 20 FCC Rcd at 11322, ¶ 31.

[130] *See, e.g.*, CDE Comments at 10; CPS Comments at 10-11; GCI Comments at 25-27; Florida Comments at 8; ISTE Comments at 23-24; Qwest Comments at 18 (mandatory timelines are critical); Weisinger Comments at 9; SDDE Reply Comments at 1-4.

[131] CPS Comments at 10, 16 (June 1); GSI Comments at 27; LAUSD Comments at 2 (July 1); On-Tech Comments at 4 (June 1); USAC Comments at 91 (July 1); Weisinger Comments at 12 (July 1); HITN Reply Comments at 2-3; Verizon Reply Comments at 4. *See also* ISTE Comments at 24 (August 15th). Commenters support performance measures, such as number of applications processed and number of days to process an application. *See* BellSouth Comments at 12; GCI Comments at 27; Wisconsin Comments at 4. USAC agrees that one if its goals is to issue funding commitments before the July 1 start of each funding year. *See* USAC Comments at 37-38.

[132] USAC Comments at 38.

[133] An additional complication, USAC explains, is that it is often difficult to get information in the summer because many schools are closed and staff is unavailable. USAC Comments at 91.

[134] *See* NEILSA Comments at 3; On-Tech Comments at 4.

- Number of applications and FRNs rejected;
- Number of applications and FRNs granted;
- Average (mean) dollar amount awarded and median dollar amount awarded, per FRN;
- Total amount disbursed.

46. *Invoices*. After eligible services have been delivered, service providers and school and library applicants submit invoices for support.[135] The Administrator issues payment to service providers, not directly to applicants.[136] If the school or library needs reimbursement of discounts due on approved services for which it has paid full price, it files the FCC Form 472, Billed Entity Applicant Reimbursement ("BEAR") Form.[137] Commenters contend that USAC's requests for bills and additional forms create significant delays.[138] For this reason, we are requiring USAC to document the amount of time it takes to make a BEAR payment to the service provider, from the date the BEAR form is submitted.

47. The applicant can, alternatively, pay only the non-discounted portion of the bill and the vendor can seek reimbursement from the Administrator by filing the FCC Form 474, Service Provider Invoice Form ("Form 474").[139] Delay in paying the service provider the discounted portion of the bill is an inconvenience for the service providers, particularly for small businesses. We are, therefore, also requiring USAC to document the amount of time it takes to make these payments to service providers, from the date the invoice is submitted.[140]

48. We recognize that the Administrator could reject more invoices in order to improve the amount of time it takes to make payments.[141] For this reason, we also require the Administrator to provide the number of paid invoices and the number of rejected invoices.

Invoices, per funding year

- Number of invoices received;
- Number of invoices paid;
- Number of invoices rejected;
- Average (mean) time to pay invoices;[142]
- Time to approve or reject 50 percent, 75 percent, and 100 percent of the submitted invoices.

49. *Appeals to the Administrator*. Applicants who receive a denial or partial denial of their

[135] USAC website, Invoice USAC, at http://www.usac.org/sl/applicants/step11 (retrieved March 5, 2007).

[136] *Id.*

[137] Universal Service for Schools and Libraries, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (October 1998) ("FCC Form 472").

[138] ALA Comments at 21; CPS Comments at 22. Qwest notes that some invoices have been outstanding at USAC since 2004. Qwest Comments at 19. One commenter observes that it has seen remarkable improvement in USAC's invoicing performance in the past year. *See* IBM Reply Comments at 5.

[139] *See* 47 C.F.R. § 54.514 (allowing billed entity to choose payment method).

[140] *See, e.g.*, BellSouth Comments at 12; Qwest Comments at 19 (recommending a 90-day deadline for paying service provider invoices); On-Tech Comments at 5 (recommending seven days for invoice processing).

[141] *See* AT&T Reply Comments at 3-4.

[142] Average time; measured from the date the invoice is submitted to the date payment is issued.

funding request from the Schools and Libraries Division can submit a request for review (or "appeal") to USAC.[143] Commenters note that they wait for a significant period of time before they receive any information from USAC about their appeals.[144] We agree with the commenters addressing this issue that appeals from the schools and libraries division to the Administrator should be resolved within a short period of time.[145] We recognize that some issues on appeal may involve complicated facts or difficult policy issues. Most appeals, however, should be handled quickly. For this reason, we will have the Administrator determine the percentage of appeals that are resolved by the Administrator within 90 days from the date of appeal.[146] The Administrator will also provide information on how long it takes to process 50 percent, 75 percent, and 100 percent of the pending appeals from the schools and libraries division.[147]

Appeals

- Number of pending appeals to the Administrator from the schools and libraries division, grouped by year filed;
- Number of current (*i.e.*, filed the previous quarter) appeals to the Administrator from the schools and libraries division;
- Average (mean) time for the Administrator to resolve appeals from the schools and libraries division;[148]
- Time for the Administrator to approve or reject 50 percent, 75 percent, and 100 percent of the quickest filed appeals from the schools and libraries division.

3. Low-income

50. The low-income program is designed to ensure that telecommunications services are available to low-income customers at just, reasonable, and affordable rates. The program reimburses carriers for providing services to qualifying consumers at discounted rates. The goal of the program is to increase subscribership among low-income consumers.[149] Commenters contend that the appropriate

[143] 47 C.F.R. § 54.719. The request for review must be filed within 60 days from the issuance of the decision. 47 C.F.R. § 54.720(a).

[144] CGCS Comments at 13; HITN Comments at 4; Qwest Comments at 12; HITN Reply Comments at 2; Qwest Reply Comments at 11 (suggesting that the Administrator should have firm deadlines); SDDE Reply Comments at 8-9.

[145] *See, e.g.*, GCI Comments at 28; HITN Comments at 4 (recommends 60 days); ISTE Comments at 25 (recommends 90 days); Kellogg Comments at 10 (six months); M-DCPS Comments at 14; On-Tech Comments at 5 (30 days); Qwest Comments at 12, 19 (90 days); Sprint Comments at 13-15; HITN Reply Comments at 2. IBM observes that its backlog of appeals at USAC has been almost eliminated recently. *See* IBM Reply Comments at 5.

[146] An appeal or request for review is considered the letter submitted by an applicant or a service provider under 47 C.F.R. § 54.719. One appeal may address more than one application, FRN, and issue. USAC may, in its discretion, subdivide appeals by FRNs if this would more accurately reflect the substantive appeals backlog.

[147] By "pending appeals" we mean an appeal or request for review filed by an applicant that has not yet been decided by the Administrator.

[148] This measurement should be the average amount of days between the denial by the schools and libraries division and the decision by USAC on appeal.

[149] Qwest Comments at 21; Verizon Reply Comments at 4. Two commenters observe that telephone subscribership has actually decreased nationwide since 2003. NJRA Reply Comments at 3; Qwest Reply Comments at 6-7. *See* (continued....)

measures for the low-income program are subscribership and actual consumer usage patterns.[150] USAC suggests that a method to determine the percentage of households eligible for low-income support, and to measure the effectiveness of the program, is to count the number of households receiving Lifeline per state per quarter compared to census data.[151] USAC suggests, *inter alia*, the following performance measures: time to process support payments and authorize disbursements; support disbursements compared to program-specific administrative costs; total number of stakeholders served.[152]

51. We do not have sufficient data at this time to establish goals for these low-income performance measurements. The performance measures we adopt should help us improve the productivity and efficiency of the low-income program. We will continue to review this area and evaluate the effectiveness of the measures we adopt today. Accordingly, we adopt the following performance measurements for the low-income support mechanism:

- Number of program beneficiaries (*i.e.*, carriers);
- Number of low-income customers for which each carrier receives low-income support;
- Number of connections supported;
- Time to process support payments and authorize disbursements;
- Average (mean) dollar amount awarded and median dollar amount awarded, per carrier;
- Total amount disbursed.

52. In addition, we are adopting performance measurements based on the Lifeline Annual Verification Results filed by carriers each year.[153] Initially, we are limiting this to the survey certifications filed by Qwest, Verizon, and AT&T (formerly SBC and BellSouth). We recognize that many carriers file these annual reports with the Administrator; however, at this initial stage of implementing our performance measurements we are asking the Administrator to provide us with this summary information from these three carriers only. These surveys, based on a statistically valid sample of customers, show that a substantial percentage of customers did not respond to the carriers' request for information. A customer's failure to respond after 60 days results in termination of Lifeline benefits. We do not know if the customers who were terminated from the Lifeline program due to their failure to respond to the survey were otherwise eligible to receive Lifeline discounts. If that is the case, after the Administrator's periodic outreach and site visits the percentage of customers who fail to respond to these surveys may decrease over time. Due to the results of these initial surveys, we are requiring the Administrator to provide us with the following summary information annually from the surveys filed by these three carriers, on a per company basis:

- Number of Lifeline customers surveyed;
- Number of Lifeline customers found to be ineligible;
- Number of Lifeline customers who did not respond to the survey.

53. This information we are requiring is a portion of the Lifeline Annual Verification

(Continued from previous page)
also "Telephone Subscribership in the United States," Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (Oct. 2006).

[150] GCI Comments at 13; Qwest Comments at 21.

[151] USAC Comments at 98-99.

[152] USAC Comments at 100.

[153] *See Lifeline and Link-Up*, CC Docket No. 96-45, Order, 19 FCC Rcd 8302 (2004); "*Wireline Competition Bureau Answers Frequently Asked Questions Concerning Lifeline Order*," Public Notice, CC Docket No. 96-45, 20 FCC Rcd 9159 (2005).

Results filed by carriers each year. We may revisit this issue at a later time and request further information from these carriers or information from the remaining carriers. We may also request the Administrator to disaggregate the results from Tribal Areas. To some degree it is inevitable that some customers will not respond to the Lifeline survey. Nevertheless, the Administrator's outreach and site visits and the carriers' outreach programs may provide better results over time.

4. Rural Health Care

54. The rural health care program provides discounted rates for telecommunications services and Internet access charges used by rural health care providers for telemedicine. USAC suggests, and we agree, that the following would be appropriate performance measures: time to process applications;[154] time to pay invoices; and time to determine appeals.[155] We do not have sufficient data at this time to establish goals for these performance measures. These performance measures will be a baseline against which subsequent goals can be implemented in the future. The performance measures we adopt should help us improve the productivity and efficiency of the rural health care program. We therefore adopt the following performance measurements for the rural health care program, with the exception of the pilot program:[156]

Applications (per funding year)

- Number of eligible applicants served;[157]
- Number of applications submitted for telecommunications service;
- Number of applications submitted for Internet access service, total and disaggregated by technology and bandwidth;
- Total number of applications submitted;
- Processing time;[158]
- Number of applications rejected;
- Number of applications granted;
- Average (mean) dollar amount awarded and median dollar amount awarded;
- Average (mean) discount, per state;
- Total amount disbursed.

Invoices (per funding year)

- Number of invoices received;
- Number of invoices paid and number of invoices rejected;
- Average (mean) time to pay invoices, measured from the date the invoice is submitted to the date

[154] *See also* GCI Comments at 27 (suggesting average number of days to process applications and total number of applications).

[155] USAC Comments at 100. GCI suggests that the Commission should measure the relative usage of the supported services. GCI Comments at 20. We are not convinced that this metric would provide useful information. The rural health care program focuses on rural and less populated areas and the number of people (patients) served may be more a reflection of general health conditions in an area than the usefulness of telemedicine.

[156] The pilot program will provide funding to support up to 85 percent of the costs of the construction of state or regional broadband networks and advanced telecommunications and information services provided over those networks. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006).

[157] *See* NEILSA Comments at 3; On-Tech Comments at 4.

[158] Average time and percent completed by June 1; measured from the date of receipt to the date of commitment or denial.

payment is issued to pay invoices.

Appeals

- Number of pending appeals to the Administrator from the rural health care division, grouped by year filed;
- Number of current (*i.e.*, filed the previous quarter) appeals to the Administrator from the rural health care division;
- Time for the Administrator to resolve appeals from the rural health care division.[159]

These performance measures do not apply to the rural health care pilot program, for which performance measurements will be established at a later date.[160]

5. High-cost

55. The high-cost program provides support payment to rural and non-rural incumbent local exchange carriers, and their competitors, to ensure that consumers in all regions have access to telecommunications services at rates that are reasonably comparable to those paid in urban areas. We reject the proposal to set a goal that consumers have access to service from at least three eligible telecommunications carriers ("ETCs").[161] As other commenters observe, funding multiple ETCs in one area does not necessarily further the goals of the universal service program.[162] Competition in such areas may, or may not, exist with the high-cost subsidies.[163] We do not have sufficient data at this time to establish goals; these performance measures will be a baseline against which goals can be implemented in the future. The performance measures we adopt should improve the productivity and efficiency of the high-cost program. Therefore, the Administrator will provide the following performance measurements:

- Number of program beneficiaries, (*i.e.*, ETCs), per study area and per wire center;[164]
- Number of lines, per study area and per wire center, for each ETC;[165]
- Number of requests for support payments;
- Average (mean) dollar amount of support and median dollar amount of support for each line for high-cost ETCs;
- Total amount disbursed, aggregate and for each ETC;
- Time to process 50 percent, 75 percent, and 100 percent of the high-cost support requests and authorize disbursements;[166]

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[159] This measurement should be the average amount of days between the denial by the schools and libraries division and the decision by USAC on appeal.

[160] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006).

[161] *See* Dobson Comments at 12-13.

[162] NTCA Reply Comments at 4; OPASTCO Reply Comments at 8-9; Verizon Reply Comments at 3.

[163] Verizon Reply Comments at 3. NTCA contends that the Commission should eliminate the rule which allows competitive ETCs to receive support based solely on the incumbent LEC's costs. NTCA Reply Comments at 4. This issue, determining the amount of high-cost support a competitive ETC should receive under our rules, is outside the scope of this proceeding.

[164] USAC Comments at 93.

[165] USAC Comments at 93.

[166] USAC Comments at 93.

- Rates of telephone subscribership in urban vs. rural areas.[167]

6. USAC Administrative Performance Measures, not Program-Specific

56. In addition to the performance measurements set forth above for the specific USF programs, we also adopt performance measures applicable to the administration of the USF, in general. USAC suggests the following performance measures: billing accuracy;[168] disbursement accuracy;[169] measurements of commitment adjustment letters ("COMADs") and fund recovery efforts.[170] We are concerned with the extent and scope of waste, fraud, and abuse in the USF.[171] Therefore, we are requiring the Administrator to provide the amount of payments determined to be improper payments and the error rate (*i.e.*, the percentage of total payments that are determined to be improper payments) and the amount of improper payments subsequently recovered from the beneficiaries by the USF Administrator.

57. We do not have sufficient data at this time to establish goals; these performance measures will establish a baseline against which goals can be implemented in the future. The Administrator shall, therefore, provide the Commission with these additional performance measurements on a funding year basis.

- USAC administrative costs, per program, and general administrative costs (not program-specific);
- The amount of payments determined to be improper payments and the error rate (*i.e.*, the percentage of total payments that are determined to be improper payments), per program;
- The amount of improper payments subsequently recovered from the beneficiaries by the USF Administrator, per program;
- Number of corrections or true-ups due to errors by the Administrator, per program;
- Number of USF contributors;
- Number of USF contributors 90 days or more delinquent in payments;
- Total amount of delinquencies or past due payments;
- Total number of contributors assessed late fees or penalties;
- Total amount of late fees or penalties;
- Total amount of contributions to the USF;
- Total amount of disbursements.

IV. PROCEDURAL MATTERS

A. Accessible Formats

58. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

B. Regulatory Flexibility Analysis

59. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the

[167] USAC Comments at 92.

[168] *See also* Qwest Comments at 22.

[169] USAC Comments at 100.

[170] Measured in dollars recovered, per funding year.

[171] *See* NJRA Reply Comments at 20-21.

Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") of the possible significant economic impact on small entities of the policies and rules addressed in this Report and Order. The FRFA is set forth in Appendix B.

C. Paperwork Reduction Act Analysis

60. This Report and Order contains a modified information collection requirement subject to the Paperwork Reduction Act of 1995 ("PRA").[172] It will be submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the modified information collection requirements contained in this Report and Order. The information collection requirements adopted herein will not go into effect until approved by OMB.

D. Congressional Review Act

61. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), *see* 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

62. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218-220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201, 202, 218-220, 254, and 303(r) this Report and Order in WC Docket No. 05-195, CC Docket No. 96-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109, and CC Docket No. 97-21 IS ADOPTED, and that Part 54 of the Commission's Rules, 47 C.F.R. Part 54, is amended as set forth in Appendix C. The Report and Order shall become effective 30 days after publication in the Federal Register.

63. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[172] Public Law 104-13

APPENDIX A

List of Commenters

Initial Comments

Commenter	Abbreviated name
Alaska E-Rate Coordinator	Alaska
Alexicon Telecommunications Consulting	Alexicon
American Association of School Administrators and Association of Educational Service Agencies	AASA
American Library Association	ALA
Arkansas E-Rate Work Group	AEWG
AT&T Corp.	AT&T
BellSouth Corporation	BellSouth
Business Discount Plan	BDP
California Department of Education	CDE
Centennial Communications Corporation	Centennial
CenturyTel, Inc.	CenturyTel
Chicago Public Schools	CPS
Council of Chief State School Officers	CCSSO
Council of the Great City Schools	CGCS
CTIA – The Wireless Association®	CTIA
Delaware Public Service Commission	DE PSC
Dobson Cellular Systems, Inc. and American Cellular Corporation	Dobson
Education and Library Networks Coalition	EdLiNC
E-Rate Service Provider Forum	ESPF
Federal Communications Commission, Office of Inspector General	OIG
Federated Investors, Inc.	Federated
Florida Public Service Commission and Florida Department of State, State Library, and Archives of Florida	Florida
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Heend, Orin and Fitzgerald, Sara	Heend
Hispanic Information and Telecommunications Network	HITN
IDT Telecom, Inc.	IDT
International Society for Technology in Education and the Consortium for School Networking	ISTE
Kellogg & Sovereign Consulting, LLC	Kellogg
Los Angeles Unified School District	LAUSD
Miami-Dade County Public Schools	M-DPS
Missouri Public Service Commission	MoPSC
National Exchange Carrier Association, Inc.	NECA
National Head Start Association	NHSA

National Rural Education Advocacy Coalition	NREAC
National Telecommunications Cooperative Association	NTCA
New Jersey Board of Public Utilities	NJ Board
New Jersey Division of the Ratepayer Advocate	NJRA
New York State Education Department	NYSED
Northeast Iowa Library Service Area	NEILSA
On-Tech	On-Tech
Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance	OPASTCO
Private School Technology Coalition	PSTC
Qwest Communications International, Inc.	Qwest
SBC Communications, Inc.	SBC
South Carolina K-12 School Technology Initiative Partnership	SC K-12
Sprint Nextel Corporation	Sprint
State E-Rate Coordinators Alliance	SECA
TracFone Wireless, Inc.	TracFone
Trillion Partners, Inc.	Trillion
United States Telecom Association	USTelecom
Universal Service Administrative Company	USAC
Verizon Communications, Inc.	Verizon
Weisiger, Greg	Weisiger
West Virginia Department of Education, Office of Technology and Information Systems	WVDE
West Virginia Library Commission	WVLC
Wisconsin Department of Public Instruction	Wisconsin

Reply Comments

Commenter	Abbreviated name
American Association of School Administrators and Association of Educational Service Agencies	AASA
American Library Association	ALA
AT&T, Inc.	AT&T
Council of the Great City Schools	CGCS
Dobson Cellular Systems, Inc. and American Cellular Corporation	Dobson
FTI Consulting, Inc.	FTI
GVNW Consulting, Inc.	GVNW
Hispanic Information and Telecommunications Network	HITN
IDT Telecom, Inc.	IDT
Illinois State Library, Office of the Secretary of State	Illinois
International Business Machines Corporation	IBM

International Society for Technology in Education and the Consortium for School Networking	ISTE
National Exchange Carrier Association, Inc.	NECA
National Telecommunications Cooperative Association	NTCA
New Jersey Division of the Ratepayer Advocate	NJRA
Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance	OPASTCO
Pennsylvania Department of Education	PDE
Qwest Communications International, Inc.	Qwest
State Educational Technology Directors Association	SETDA
State E-Rate Coordinators Alliance	SECA
South Dakota Department of Education	SDDE
Sprint Nextel Corporation	Sprint
Universal Service Administrative Company	USAC
Verizon Communications, Inc.	Verizon
WiscNet	WiscNet
Wisconsin Council on Library and Network Development	Wisconsin COLAND
Wisconsin Department of Public Instruction	Wisconsin

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[173] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in WC Docket 05-195 ("*Program Management NPRM*").[174] The Commission sought written public comment on the proposals in the *Program Management NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

A. Need for, and Objectives of, the Rules

2. This Report and Order adopts rules to safeguard the Universal Service Fund ("USF") from waste, fraud, and abuse as well as measures to improve the management, administration, and oversight of the USF. In this Report and Order, the Commission adopts rules requiring timely filing of Telecommunications Reporting Worksheets and timely payment of universal service fund contributions. The Commission also adopts rules assessing penalties and interest for failure to file and pay in a timely manner. This Report and Order codifies the USF Administrator's current practice of applying a delinquent payment to the contributor's oldest past due amount. This Report and Order adopts performance measures for the universal service programs and for the Administrator. In addition, the Commission adopts document retention requirements and administrative limitation periods for the high-cost, low-income, and rural health care universal service programs; adopts rules for recovery of improperly disbursed funds for the high-cost, low-income, and rural health care universal service programs; and revises our debarment rules to include parties who are convicted of criminal violations or held civilly liable for acts arising out of the high-cost, low-income, and rural health care universal service programs.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments filed that specifically addressed the IRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[175] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

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[173] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[174] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) ("*Program Management NPRM*").

[175] 5 U.S.C. § 604(a)(3).

organization," and "small governmental jurisdiction."[176] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[177] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[178]

5. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[179] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[180] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[181] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[182] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[183]

6. *Schools and libraries.* As noted, "small entity" includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law."[184] A secondary school is generally defined as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12.[185] For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.[186] Certain other statutory definitions apply as well.[187] The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities.[188] We are unable to estimate with precision the

[176] 5 U.S.C. § 601(6).

[177] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[178] 15 U.S.C. § 632.

[179] 5 U.S.C. § 601(4).

[180] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[181] 5 U.S.C. § 601(5).

[182] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

[183] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, 40 (Jul. 2002).

[184] 47 C.F.R. § 54.500(b).

[185] 47 C.F.R. § 54.500(j).

[186] 47 C.F.R. § 54.501.

[187] *See id.*

number of these entities that would qualify as small entities under SBA's size standard; we estimate that fewer than 83,700 schools and 9,000 libraries might be affected annually by our action, under current operation of the program.

7. *Incumbent Local Exchange Carriers ("LECs").* We have included small incumbent local exchange carriers in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[189] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[190] We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

8. *Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs") and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers." The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[191] According to Commission data,[192] 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees.[193] In addition, 35 carriers reported that they were "Other Local Exchange Carriers." Of the 37 "Other Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.[194] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

9. *Interexchange Carriers ("IXCs").* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[195] According to the Commission

(Continued from previous page)

[188] 13 C.F.R. § 121.201, North American Industry Classification System ("NAICS") codes 611110 and 519120.

[189] 5 U.S.C. § 601(3).

[190] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* U.S.C. § 632(a) ("Small Business Act"); 5 U.S.C. § 601(3) ("RFA"). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[191] 13 C.F.R. § 121.201, NAICS code 517110.

[192] Trends in Telephone Service at Table 5.3.

[193] *Id.*

[194] *Id.*

[195] 13 C.F.R. § 121.201, NAICS code 517110.

data,[196] 281 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees.[197] Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the rules and policies adopted herein.

10. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging*[198] and *Cellular and Other Wireless Telecommunications*.[199] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission data, [200] 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees.[201] Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

11. *Private and Common Carrier Paging.* A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area paging licenses commenced on February 24, 2000, and closed on March 2, 2000.[202] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of either paging or messaging services or other mobile services.[203] Of those, the Commission estimates that 360 are small, under the SBA-approved small business size standard.[204]

12. *Broadband Personal Communications Service.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[205] For Block F, an

[196] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, p. 5-5 (Feb. 2007) ("Trends in Telephone Service").

[197] *Id.*

[198] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517211.

[199] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212. This category includes Personal Communications Service (PCS) and SMR Telephony Carriers.

[200] Trends in Telephone Service at Table 5.3.

[201] *Id.*

[202] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085, ¶ 98 (1999).

[203] Trends in Telephone Service, Table 5.3, p. 5-5.

[204] *Id.*

[205] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-52, ¶¶ 57-60 (1996) ("*Broadband PCS Report and Order*"); *see also* 47 C.F.R. § 24.720(b).

additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[206] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[207] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[208] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[209] On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[210] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.[211]

13. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers ("ISPs"). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity."[212] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[213] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[214] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of internet service providers increased approximately five percent from 1997 to 2002.[215]

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[206] *See Broadband PCS Report and Order*, 11 FCC Rcd at 7852, ¶ 60.

[207] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[208] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997).

[209] *See C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999).

[210] *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

[211] In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

[212] U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers" (Feb. 2004) www.census.gov.

[213] 13 C.F.R. § 121.201, NAICS code 518111.

[214] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 514191 (issued Oct. 2000).

[215] *See* U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 514191 (issued Nov. 2004). The preliminary data indicate that the total number of "establishments" increased from 4,165 to 4,394. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," (continued….)

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. This Report and Order adopts rules to safeguard the USF from waste, fraud, and abuse as well as measures to improve the management, administration, and oversight of the USF. In this Report and Order, the Commission adopts rules requiring timely filing of Telecommunications Reporting Worksheets, timely payment of universal service fund contributions, and rules assessing penalties and interest for failure to file and pay in a timely manner. This is not an additional reporting requirement; we are adopting penalties for entities that fail to comply with this preexisting reporting requirement. In addition, this Report and Order codifies the Administrator's current practice of applying a delinquent payment to the contributor's oldest past due amount, which is not a reporting requirement.

15. This Report and Order adopts performance measures for the universal service programs and for the Administrator. We are requiring the USF Administrator to file certain performance measures pertaining to the universal service fund mechanisms. This new requirement will facilitate Commission compliance with the Government Performance and Results Act ("GPRA") of 1993.[216] GPRA established statutory requirements for federal agencies to engage in strategic planning and performance measurement. GPRA is intended to improve efficiency and effectiveness of federal programs through the establishment of specific goals for program performance. GRPA has three main requirements. Federal agencies must develop strategic plans with long-term, outcome-related goals and objectives,[217] develop annual goals linked to the long-term goals,[218] and measure progress toward the achievement of those goals in annual performance plans and report annually on their progress in program performance reports.[219] The performance requirements we adopt in this Report and Order will allow us to later adopt goals for the universal service programs and to measure and progress toward achievement of those goals.

16. In addition, the Commission adopts document retention requirements and administrative limitation periods for the high-cost, low-income, and rural health care universal service programs; adopts a document retention requirement for USF contributors; adopts rules for recovery of improperly disbursed funds for the high-cost, low-income, and rural health care universal service programs; and revises our debarment rules to include parties who are convicted of criminal violations or held civilly liable for acts arising out of the high-cost, low-income, and rural health care universal service programs. These rule changes are not new reporting requirements.

17. Finally, this Report and Order requires the USF Administrator to work with the Wireline Competition Bureau to modify the relevant FCC forms or to create additional questions to more accurately determine how schools and libraries connect to the Internet and their precise levels of connectivity. This additional reporting requirement will probably consist of an additional question or questions added to existing forms that USF beneficiaries currently file.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and

(Continued from previous page)
because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

[216] Government Performance and Results Act of 1993, Public Law No. 103-62.

[217] 5 U.S.C. § 306.

[218] *Id.*; 31 U.S.C. § 1115.

[219] 31 U.S.C. §§ 1115 – 1116.

Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[220]

19. The *Program Management NPRM* sought comment on a number of issues pertaining to our oversight of the universal service fund. One issue raised in the *Program Management NPRM* was whether we should adopt an annual audit requirement. In this Report and Order the Commission has declined to adopt such a requirement due to the extensive auditing program initiated by the Commission's Office of the Inspector General.

20. The benefits of requiring the USF Administrator to provide the Commission with performance measures far outweigh any burdens associated with implementing these new reporting requirements. We are requiring the USF Administrator to file certain performance measures pertaining to the universal service fund mechanisms to allow us to improve the universal service programs and to facilitate Commission compliance with GPRA. GPRA is intended to improve efficiency and effectiveness of federal programs through the establishment of specific goals for program performance. Our intention is to use the performance measurements adopted in this Report and Order to later adopt goals for the universal service programs and further improve these programs.

21. In addition, this Report and Order requires the USF Administrator to work with the Wireline Competition Bureau to modify the relevant FCC forms or to create additional questions to more accurately determine how schools and libraries connect to the Internet and their precise levels of connectivity. This additional reporting requirement will probably consist of an additional question or questions added to existing forms that USF beneficiaries currently file and thus will affect small entity beneficiaries. We anticipate that the minimal burden of requiring this additional information regarding broadband connections will be outweighed by the benefit of using this information to enable the Commission to determine how the schools and libraries program can better meet the needs of program applicants.

F. Report to Congress

64. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[221] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[222]

[220] 5 U.S.C. § 603(c)(1) – (c)(4).

[221] *See* 5 U.S.C. § 801(a)(1)(A).

[222] *See* 5 U.S.C. § 604(b).

APPENDIX C

Rules

Part 54 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 54 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 54.202 is amended by adding subsection (e), as follows:

* * *

(e) All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. These records should include the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation. This documentation must be maintained for at least five years from the receipt of funding.

3. Section 54.417(a) is amended by deleting the phrase "or until audited by the Administrator" from the second paragraph.

4. Section 54.521 is renumbered 54.8 and subsections (a) (1), (5), (c), (d), (e)(3), (e)(4), (g) are amended as follows:

(a) Definitions -- (1) Activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism. Such matters include the receipt of funds or discounted services through one or more of these support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding one or more of these support mechanisms.

* * *

(5) Debarment. Any action taken by the Commission in accordance with these regulations to exclude a person from activities associated with or relating to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism. A person so excluded is "debarred."

* * *

(7) Suspension. An action taken by the Commission in accordance with these regulations that immediately excludes a person from activities associated with or relating to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism for a temporary period, pending completion

of the debarment proceedings. A person so excluded is "suspended."

* * *

(c) Causes for suspension and debarment. Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism.

(d) Effect of suspension and debarment. Unless otherwise ordered, any persons suspended or debarred shall be excluded from activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism. Suspension and debarment of a person other than an individual constitutes suspension and debarment of all divisions and/or other organizational elements from participation in the program for the suspension and debarment period, unless the notice of suspension and proposed debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions.

* * *

(e)(2)(i) Give the reasons for the proposed debarment in terms sufficient to put a person on notice of the conduct or transaction(s) upon which it is based and the cause relied upon, namely, the entry of a criminal conviction or civil judgment arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism;

* * *

(3) A person subject to proposed debarment, or who has an existing contract with a person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism may contest debarment or the scope of the proposed debarment. A person contesting debarment or the scope of proposed debarment must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the Federal Register, whichever is earlier.

(4) A person subject to proposed debarment, or who has an existing contract with a person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism may also contest suspension or the scope of suspension, but such action will not ordinarily be granted. A person contesting suspension or the scope of suspension must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the Federal Register, whichever is earlier.

* * *

(g) Time period for debarment. A debarred person shall be prohibited from involvement with the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism for three (3) years from the date of debarment. The Commission may, if necessary to protect the public interest, set a longer period of debarment or extend the existing period of debarment. If multiple convictions or judgments have been rendered, the Commission shall determine based on the facts before it whether debarments shall run concurrently or consecutively.

5. Section 54.619 is amended by adding new subsection (d) as follows:

* * *

(d) Service providers. Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 5 years after the last day of the delivery of discounted services. Any other document that demonstrates compliance with the statutory or regulatory requirements for the rural health care mechanism shall be retained as well.

6. Section 54.702 is amended by adding new subsection (o) as follows:

* * *

(o) The Administrator shall provide performance measurements pertaining to the universal service support mechanisms as requested by the Commission by order or otherwise.

7. Section 54.706 is amended by adding new subsection (e) as follows:

* * *

(e) Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules. These records shall include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. This document retention requirement also applies to any contractor or consultant working on behalf of the contributor.

8. Section 54.713 is amended by adding new subsections (b), (c), (d), and (e) as follows:

* * *

(b) If a universal service fund contributor fails to make full payment on or before the date due of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, the payment is delinquent. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest at the rate equal to the U.S. prime rate (in effect on the date of the delinquency) plus 3.5 percent, as well as administrative charges of collection and/ or penalties and charges permitted by the applicable law (*e.g.*, 31 U.S.C. § 3717 and implementing regulations).

(c) If a universal service fund contributor is more than 30 days delinquent in filing a Telecommunications Reporting Worksheet Form 499-A or 499-Q, the Administrator shall assess an administrative remedial collection charge equal to the greater of $100 or an amount computed using the rate of the U.S. prime rate (in effect on the date the applicable Worksheet is due) plus 3.5 percent, of the amount due per the Administrator's calculations. In addition, the contributor is responsible for administrative charges of collection and/or penalties and charges permitted by the applicable law (*e.g.*, 31 U.S.C. § 3717 and implementing regulations). The Commission may also pursue enforcement action against delinquent contributors and late filers, and assess costs for collection activities in addition to those imposed by the Administrator.

(d) In the event a contributor fails both to file the Worksheet and to pay its contribution, interest will accrue on the greater of the amounts due, beginning with the earlier of the date of the failure to file or pay.

(e) If a universal service fund contributor pays the Administrator a sum that is less than the amount due for the contributor's universal service contribution, the Administrator shall adhere to the "American Rule" whereby payment is applied first to outstanding penalty and administrative cost charges, next to accrued interest, and third to outstanding principal. In applying the payment to outstanding principal, the Administrator shall apply such payment to the contributor's oldest past due amounts first.